THE HON'BLE SRI JUSTICE C.V. RAMULU

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+W.P.No.19404 of 1998

%Dated 01-8-2007

Between:

K. Venkateshwarlu ..... Petitioner

and

The State of Andhra Pradesh,
represented by its Additional
Secretary to Government,
Labour, Employment, Training &
Factories (L.B.I) Department,
Secretariat, Hyderabad
and others ….. Respondents

!Counsel for the petitioner : SHRI Sri P. RAGHAVENDER REDDY

^Counsel for Respondents: G.P. FOR LABOUR
SHRI POLISETTI RADHAKRISHNA

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> HEAD NOTE:

? Cases referred

1. 1997(4) SCC 391
2. 1982 LLJ 70 (SC)

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Wednesday, 1st day of August,2007

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ORDER:

This Writ Petition is filed challenging the Award dated 2-3-1998 made in I.D.No.153 of 1995 on the file of Industrial Tribunal-cum-Labour Court, Warangal.

Petitioner is the workman and 3rd respondent is the Management. It appears, the services of the petitioner while working as NMR Sweeper in the Office of the 3rd respondent were terminated without any notice. Therefore, he raised a dispute under Section 2-A(2) of the Industrial Disputes Act,1947 (for short 'the Act') in I.D.No.153 of 1995. It was the case of the petitioner that he was appointed as N.M.R. Sweeper with effect from 20-1-1990 in the 3rd respondent-Municipality and worked upto 25-12-1992 continuously without any break. However, suddenly and orally, his services were terminated with effect from 26-12-1992 without assigning any reasons. It was his contention that he had put in more than 240 days continuous service in the calendar year preceding the date of termination from service and the oral termination is in violation of Section 25-F of the Act. The 3rd respondent-Management filed a counter admitting that the petitioner worked from 20-1-1990 to 25-12-1992, but he was only a

daily wage employee; therefore, even if he has completed 240 days of service, it cannot be said that there was any violation of Section 25-F of the Act.

Before the Labour Court, on his behalf, petitioner examined himself as W.W.1 and got marked Exs.W1 and W2. On behalf of the Management, none was examined; however, Exs.M1 and M2 were got marked. After a detailed consideration of both oral and documentary evidence, though the Labour Court gave a finding that the petitioner had put in more than 240 days continuous service in a calendar year preceding the date of his termination, in view of the Judgment of the Supreme Court in **HIMANSHU KUMAR VIDYARTHI v. STATE OF BIHAR**[1] held that disengagement from service of a daily wage worker not appointed according to rules cannot be construed as retrenchment under the Act.

Thus, the only question that arises for consideration is whether the termination of services of the petitioner amounts to retrenchment and is entitled for the benefit of the provisions of Section 25-F of the Act or not ?

Learned counsel for the petitioner relied upon a Constitution Bench Judgment of the Supreme Court reported in **PUNJAB LAND DEVELOPMENT AND RECLAMATION CORPORATION LTD. v. PRESIDING OFFICER, LABOUR COURT, CHANDIGARH** [2] wherein, applying various tests, principles and precedents to the definition in Section 2(oo) of the Act held that the expression ‘retrenchment’ means termination by the employer of the services of a workman for any reason whatsoever except those expressly excluded in the Section and invited attention of the Court to paragraphs 80, 81 and 82, which read as under:

> “80. The definitions iN s. 2 of the Act are to be taken 'unless

there is anything repugnant in the subject or context'. The contextual interpretation has not been ruled out. In R.B.I. v. Peerless General Finance, reported in [1987] 2 SCR 1, O. Chinnappa Reddy, J. said: "Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression 'Prize Chit' in Srinivasa and we find no reason to depart from the Court's construction."

81. As we have mentioned, industrial and labour legislation involves social and labour policy. Often they are passed in conformity with the resolutions of the International Labour Organisation. In Duport Steels v. Sirs, [1980] 1 W.L.R. 142, the House of Lords observed that there was a difference between applying the law and making it, and that judges ought to avoid becoming involved in controversial social issues, since this might affect their reputation in impartiality. Lord Diplock said:

> "A statute passed to remedy what is perceived by Parliament to be a defect in the existing law may in actual operation turn out to have injurious consequences that Parliament did not anticipate at the time the statute was passed; if it had, it would have made some provision in the Act in order to prevent them ..... But if this be the case it is for Parliament, not for the judiciary, to decide whether any changes should be made to the law as stated in the Acts

82. Applying the above reasonings, principles and precedents, to the definition in s. 2(00) of the Act, we hold that

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever except those expressly excluded in the section."

Further, learned counsel for the petitioner submitted that in the judgment reported in **HIMANSHU KUMAR VIDYARTHI** (1 supra) the question that arose for consideration of the Court was whether the termination of services of the petitioners therein cannot be said to have been retrenchment within the meaning of Section 2(oo) of the Act. While examining the case, the Apex Court found that the petitioners therein were the employees of a Government Department governed by statutory rules (made under Article 309 of the Constitution of India); therefore, every Department of the Government cannot be treated as an industry and the concept of industry to that extent stand excluded when the services of the employees of such Department are governed by statutory Rules. It was also noticed by the Apex Court that the petitioners therein were not appointed to the post in accordance with Rules, but were engaged on the basis of need of the work and they were temporary employees working on daily wage basis. Under those circumstances, their disengagement from service was held to be 'not a retrenchment 'within the meaning of Section 25-F of the Act. This Judgment could not have been taken into consideration and applied by the Labour Court to the facts of this case. In the present case, there is no dispute that the Municipality of Paloncha, Khammam District is an industry within the meaning of the Act and the petitioner was not governed by any Rules made under Article 309 of the Constitution. Therefore, the said Judgment has no relevance to the facts of this case.

Whereas, learned counsel for the respondents supported the impugned Award made by the Labour Court and stated that the case of

the petitioner is squarely covered by the Judgment of the Supreme Court in **HIMANSHU KUMAR VIDYARTHI** (1 supra); therefore, the Labour Court has not committed any infirmity calling for interference of this Court under Article 226 of the Constitution.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and gone through the impugned Award and other material made available on record.

Before going into the merits of the case, it may be necessary to notice Section 2(oo) of the Act, which reads as under:

> " 'retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include—
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation, if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> (bb) termination of the service of the workman as a result of the non-renewal of the contract of the employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
>
> (c) termination of the service of a workman on the ground of continued ill-health."

At the outset, I am of the opinion that the excluded clauses of the said Section are not applicable to the facts of this case. Therefore, the termination of the petitioner herein amounts to retrenchment under Section 2(oo) of the Act for the reasons stated infra.

The Constitution Bench of the Apex Court in **PUNJAB LAND DEVELOPMENT AND RECLAMATION CORPORATION LIMITED** (2 supra) has elaborately dealt with the scope and connotation of the expression 'retrenchment' and held that the expression 'retrenchment' means termination of the services of a

workman for any reason whatsoever other than those expressly excluded in the definition in Section 2(oo) of the Act and the expression 'retrenchment' does not mean termination by the employer of the services of the surplus labour for any reason whatsoever. The expression 'retrenchment' is not to be understood in its narrow, natural and contextual meaning, but is to be understood in its wider literal meaning to mean termination of service of workman for any reason whatsoever. Apart from that, insofar as the case on hand is concerned, it is not the case of the respondent-workman that the petitioner herein is governed by any statutory Rules made under Article 309 of the Constitution of India. Admittedly, petitioner was appointed as N.M.R./daily wage employee and worked for more than 240 days continuously in the calendar year preceding the date of his termination and his services were terminated/retrenched without following the mandatory provisions of Section 25-F of the Act. Therefore, it cannot be said that the services of the petitioner were not retrenched/terminated and as such, there is no violation of provisions of Section 25-F of the Act by the Management. The decision in **PUNJAB LAND DEVELOPMENT & RECLAMATION CORPORATION LTD.** (2 supra) is squarely applicable to the case on hand. The Judgment relied upon by the respondent-Management in **HIMANSHU KUMAR VIDYARTHI** (1 supra) has no application to the facts of this case. That was a case where a daily wage employee/temporary employee, whose services are governed by statutory Rules, when his services were terminated, claimed that the Department had violated the provisions of Section 25-F of the Act and the termination of his services amounted to retrenchment. This is not one such case. Admittedly, petitioner herein was appointed as NMR daily wage employee and the Municipality is an 'industry' within the

meaning of Section 2(j) of the Act and the service condition of the petitioner were not governed by any statutory rules made under Article 309 of the Constitution of India. Further, it was not a Department of the Government, may be a local body/instrumentality of the State. Therefore, I am of the view that the Labour Court has grossly erred in dismissing the claim petition filed by the workman under Section 2-A(2) of the Act on a wrong premise. As such, the impugned Award is liable to be set aside and is accordingly set aside. I.D.No.153 of 1994 on the file of Industrial Tribunal-cum-Labour Court, Warangal shall stand allowed and the respondent-Management is directed to reinstate the petitioner-workman with continuity of service and full back wages from the date of filing of the claim petition till the date of reinstatement. Respondents shall reinstate the petitioner within a period of four weeks from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is allowed. No order as to costs.

01-8-2007

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[1] 1997(4) SCC 391

[2] 1982 LLJ 70 (SC)